

PERSONNEL

MERIT SYSTEM BOARD

Leaves, Hours of Work and Employee Development

Proposed Readoption with Amendments: N.J.A.C. 4A:6-1 through 5

Authorized By: Merit System Board, Margaret E. L. Howard, Presiding Board Member.

Authority: N.J.S.A. 11A:2-6(d), 11A:6-1 through 11A:6-28, 18A:31-2, 30:4-178, 34:11B-1 et seq., 38:23-2, 38A:1-1, 38A:4-4, 40A:14-177, 52:14-26.2; P.L.2001, c.351; Executive Order No. 12 (1990); 10 U.S.C. Section 10101, 29 U.S.C. 2601 et seq., 38 U.S.C. Section 4301 et seq., 42 U.S.C. 12101 et seq.; and 29 CFR 825.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-34.

A public hearing concerning the proposed readoption with amendments will be held on:

Tuesday, March 4, 2003 at 3:00 P.M.

Merit System Board Room

44 South Clinton Avenue

Trenton, New Jersey

Please call the Legal Liaison Unit at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by March 22, 2003 to:

Henry Maurer, Director

Merit System Practices and Labor Relations

Unit A

Department of Personnel

P.O. Box 312

Trenton, New Jersey 08625-0312

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1(c), N.J.A.C. 4A:6 expires on June 17, 2003. The Merit System Board has reviewed the rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by law. Since N.J.A.C. 4A:6 was last readopted in 1997, various amendments have been adopted, as required by legislative enactment, in accordance with recommendations by advisory boards with whom the Commissioner of Personnel consults, and pursuant to Departmental review of the rules.

Subchapter 1 concerns leaves of absence for employees in State service and in political subdivisions. N.J.A.C. 4A:6-1.1, General provisions, includes special provisions regarding leaves of absence and leave procedures in local service, as well as State and local appointing authority recordkeeping requirements, and other general leave provisions. N.J.A.C. 4A:6-1.2, Vacation leave, sets forth eligibility criteria for vacation leave in State and local service and other provisions concerning the use and accumulation of vacation leave. N.J.A.C. 4A:6-1.3, Sick leave, sets forth eligibility criteria for sick leave in State and local service and other provisions concerning the use and accumulation of sick leave. N.J.A.C. 4A:6-1.4, Sick leave procedures: State service, which is limited to State service, sets forth provisions regarding sick leave reporting, proof of illness or injury, special circumstances involving chronic or recurring illnesses, situations in which examination by a State doctor may be required and record-keeping requirements. N.J.A.C. 4A:6-1.5, Vacation, administrative and sick leave adjustments: State service, another rule that is limited to State service, provides

instances in which an employee's vacation, administrative and sick leave entitlements must be adjusted due to an unpaid leave of absence, workweek changes and other similar circumstances.

Sick leave injury benefits in State service are the subject of two rule sections, N.J.A.C. 4A:6-1.6, Sick Leave Injury (SLI) requirements: State service, and N.J.A.C. 4A:6-1.7, Sick Leave Injury (SLI) reporting and appeal procedures: State service. With the readoption of these rule sections, SLI benefits consisting of paid leave will continue to be awarded to those full-time and part-time State employees who are disabled due to a work-related injury or illness as that concept is defined in N.J.A.C. 4A:6-1.6.

Numerous other leaves, limited to State service, are provided for in succeeding rules: pregnancy-disability and child care leaves, N.J.A.C. 4A:6-1.8; administrative leave, N.J.A.C. 4A:6-1.9; leave without pay, N.J.A.C. 4A:6-1.10; education leave, N.J.A.C. 4A:6-1.14; leave for athletic competition, N.J.A.C. 4A:6-1.15; leave for emergency civilian duty, which includes American Red Cross disaster relief services, N.J.A.C. 4A:6-1.18; leave for jury duty, N.J.A.C. 4A:6-1.19; and leave to appear as a witness, N.J.A.C. 4A:6-1.20. Conversely, leave for elective office, N.J.A.C. 4A:6-1.17, is limited to local service, while leave for union office, N.J.A.C. 4A:6-1.16; and leave for appointment by Governor; are available in both State and local service. Though limited to State service, the provisions of N.J.A.C. 4A:6-1.24, regarding school volunteer leave, permit local governments to establish their own school volunteer leave programs.

With respect to military leave, however, the Merit System Board proposes amendments to N.J.A.C. 4A:6-1.11. Such amendments are necessary to conform the rule to federal law and changes in State law and to eliminate confusion and inconsistent application of the rule by the appointing authorities.

First, current subsection (a) would be relocated as subsection (c). Accordingly, current subsections (b) and (c) would be recodified as paragraphs (a)1 and (b)1, respectively, with the addition of introductory paragraphs (a) and (b). This relocation and recodification is intended to ensure that information regarding New Jersey National Guard service and service in the other branches of the military reserves would be moved to the top of the rule section and therefore be more readily accessible to users of the rules. The newly relocated subsection (c) would be reorganized to clarify that its provisions concern service for all members of the Federal and State branches of the military in time of war or emergency. A new paragraph (c)4 would be added to explain how an employee who is a New Jersey National Guard member or a member of other branches of the reserves may receive paid leave under subsection (c).

Next, N.J.A.C. 4A:6-1.11 would be amended to state that an appointing authority may only reschedule an employee's work time to avoid conflict with military leave based on a mutual agreement between the appointing authority and the employee. See 38 U.S.C. Section 4311. The rule currently permits the appointing authority to unilaterally reschedule an employee's hours. However, Federal law

provides that a member of the “uniformed service shall not be denied...any benefit of employment by an employer on the basis of” the employee’s membership in the uniformed service. The scheduling of work is considered to be a benefit of employment. Accordingly, appropriate language is proposed to current subsections (b) and (c), recodified as paragraphs (a)1 and (b)1.

Additionally, current subsection (b), recodified as paragraph (a)1, would be amended and reorganized in accordance with P.L.2001, c.351, in several ways. First, current subsection (b) would be clarified to state that its provisions concern service for New Jersey National Guard members for Federal and State active duty or active duty for training. Also, although New Jersey National Guard members are considered reservists, they are entitled to military leave in accordance with N.J.S.A. 38A:4-4. Therefore, language to this effect is also proposed for current subsection (b), recodified as paragraph (a)1. The language would further indicate that employees in the career, senior executive or unclassified service are entitled to up to 90 work days in the aggregate of paid leave in a given year for Federal active duty or active duty for training. Paid leave would be unlimited for State active duty or active duty for training. Language referring to paid leave for military duty when ordered by the Governor would be deleted as redundant since State military duty is unlimited. In no case would individuals be entitled to paid leave for inactive duty training such as weekend drills.

An amendment is also necessary to clarify that the definition of Federal and State active duty would be determined by the State's Adjutant General. Therefore, language to this effect is proposed for current subsection (b), renumbered as paragraph (a)1.

Current subsection (c), recodified as paragraph (b)1, would be amended and reorganized in accordance with P.L.2001, c.351, to clarify that its provisions concern Federal active duty for all reservists. Further, as P.L.2001, c.351, requires that employees who are members of the National Guard in states other than New Jersey are also entitled to a paid military leave, N.J.A.C. 4A:6-1.11 must be amended accordingly. The Board has also been advised that Coast Guard reservists are entitled to paid military leave. See 10 U.S.C. Section 10101. Accordingly, current subsection (c), recodified as paragraph (b)1, would be amended to indicate an entitlement of Coast Guard reservists, National Guard members of other states, and other military reservists, to paid leave of up to 30 days in the aggregate for Federal active duty, which shall include both active duty and active duty for training but not inactive duty training such as weekend drills.

Also, the Board proposes some technical amendments. Language in subsections (a) through (d) concerning the accrual of seniority and salary increments is proposed for deletion, and would be included instead in a proposed new subsection (e) applicable to all types of military leave. Similarly, the language concerning vacation leave in the

current subsections (b) and (c) (now paragraphs (a)1 and (b)1), and also subsection (d), would be deleted. The new language in subsection (e) would note that military leave is in addition to other time off, which would include vacation leave.

Finally, N.J.A.C. 4A:6-1.11(e) (recodified as (f)) would be amended to refer to the Department of Military and Veterans' Affairs instead of the agency's former name, the Department of Defense.

The Board further proposes amendments to N.J.A.C. 4A:6-1.13, Convention leave. The language of the current rule is based on two statutes, N.J.S.A. 11A:6-10 and 40A:14-177, declared unconstitutional by the New Jersey Superior Court, Appellate Division, in *New Jersey State Firemen's Mutual Benevolent Association, et al., v. North Hudson Regional Fire and Rescue*, 340 N.J.Super. 577 (App. Div. 2001), *certif. den.* 170 N.J. 88 (2001). In *North Hudson*, the court held that the laws' inclusion of some ethnic organizations and exclusion of others had no rational basis and constituted special legislation. *Id.* at 588-589. The court also held that the statutes improperly delegated to private organizations such as unions the power to determine how many could attend their conventions without regard to appointing authority staffing needs. *Id.* at 591-592.

In response to the *North Hudson* decision, P.L.2002, c.41, was enacted on July 12, 2002, reinstating N.J.S.A. 11A:6-10 and 40A:14-177 with changes that address the

court's concerns. The statutes now require State and local governments to grant paid leave for convention attendance to a duly authorized representative of the New Jersey Policemen's Benevolent Association, the Fraternal Order of Police, the Firemen's Mutual Benevolent Association, and the Professional Fire Fighters Association of New Jersey. Ethnic organizations such as the Bronze Shield, the Vulcan Pioneers and the Italian American Police Society of New Jersey, previously listed in the statutes, are no longer included. In addition to limiting the eligible employee organizations, the statutes now also limit the number of authorized representatives entitled to paid leave to attend conventions. No more than 10 percent of the employee organization's membership is permitted the paid leave, except that no less than two and no more than 10 such representatives are entitled to the leave, unless more than 10 such representatives are permitted such leave pursuant to an agreement between the appointing authority and negotiations representatives. However, for an employee organization with more than 5,000 members, no more than 25 authorized representatives are entitled to the paid leave.

Therefore, the Board proposes amending N.J.A.C. 4A:6-1.13 to reflect the newly enacted provisions of N.J.S.A. 11A:6-10 and 40A:14-177. Language in the current subsection (b) referring to organizations not listed in the statutes is proposed for deletion. Subsection (a), which concerns convention leave involving primarily veterans organizations but also other organizations listed in N.J.S.A. 38:23-2, a statute unaffected by the *North Hudson* decision, would be amended to delete references to

specific organizations and types of organizations. This is because listing one category of organization (veterans groups) or the name of another organization (the New Jersey Civil Service Association), as the current rule does, while omitting reference to other organizations specifically named in the statute, is not helpful and possibly misleading. However, the amended rule would retain the cross-reference to the statute.

Finally, current subsection (f), which refers to leaves taken by teachers in the State colleges as provided for by the Chancellor of Higher Education, is proposed for deletion. There is no longer a Chancellor of Higher Education. Each State college's Board of Trustees is now responsible for leave policies regarding the college's teaching staff. See N.J.S.A. 18A:64-6.

Rules regarding another major leave area, family leave, are proposed for readoption without change. N.J.A.C. 4A:6-1.21, Family leave, sets forth provisions common to both the State and Federal family leave programs and provides useful examples regarding interaction between the two programs. N.J.A.C. 4A:6-1.21A is specific to State family leave, while N.J.A.C. 4A:6-1.21B addresses Federal family and medical leave. An appendix provides a chart that compares the major provisions of the two family leave programs.

The donated leave program, found at N.J.A.C. 4A:6-1.22, is available in both State and local service as set forth in the rule, and provides for the donation of sick and vacation leave to an employee suffering from a catastrophic health condition or injury

who has exhausted his or her paid leave benefits. The voluntary furlough program, found at N.J.A.C. 4A:6-1.23, establishes a program in which employees in State and local service, under the parameters set forth in the rule, may have the opportunity to take a voluntary furlough from employment. The program has been used over the years to assist public agencies in achieving fiscal savings and to provide employees with the opportunity to provide child care or seek further education.

Subchapter 2 concerns hours of work in State service. N.J.A.C. 4A:6-2.1, General provisions, provides in part that, in local service, appointing authorities may establish hours of work subject to applicable negotiations requirements. The criteria for determining workweeks are set forth in N.J.A.C. 4A:6-2.2 (for fixed workweek job titles), 4A:6-2.2A (for law enforcement job titles); and 4A:6-2.3 (for non-limited job titles). N.J.A.C. 4A:6-2.4 addresses holidays, while N.J.A.C. 4A:6-2.5 concerns inclement weather or emergency conditions. Finally, variations in usual work hours are addressed in N.J.A.C. 4A:6-2.6 (flexitime programs), 4A:6-2.7 (alternative workweek programs) and 4A:6-2.8 (adjusted hours of operation).

Subchapter 3 sets forth the eligibility requirements and procedures for obtaining Supplemental Compensation on Retirement (SCOR), a program in State service that provides for the payment of compensation for half the value of a retiring employee's accumulated sick leave. Specifically, N.J.A.C. 4A:6-3.1 sets forth the eligibility criteria for SCOR, while N.J.A.C. 4A:6-3.2 addresses an employee's SCOR eligibility when he or she has had a break in service. N.J.A.C. 4A:6-3.3 includes the formula for

computing the SCOR payment. N.J.A.C. 4A:6-3.4 delineates the SCOR application procedures. N.J.A.C. 4A:6-3.5 concerns the impact on SCOR of an intergovernmental transfer.

Subchapter 4 concerns human resource development programs. Specifically, N.J.A.C. 4A:6-4.1 includes general provisions regarding permissible human resource development programs in local service and the establishment of various employee development programs in State service by the Commissioner of Personnel. N.J.A.C. 4A:6-4.2 establishes a Human Resource Development Institute (HRDI) in the Department of Personnel. N.J.A.C. 4A:6-4.3 sets forth provisions on training and education programs in State service. N.J.A.C. 4A:6-4.4 provides for the Certified Public Manager (CPM) program in State service. N.J.A.C. 4A:6-4.5 involves career development programs in State service. Other rules in Subchapter 4 include sections on Tuition Aid (N.J.A.C. 4A:6-4.6), Employee Interchange (N.J.A.C. 4A:6-4.8), Internship Programs (N.J.A.C. 4A:6-4.9) and the Employee Advisory Service (N.J.A.C. 4A:6-4.10). The latter provides for counseling, rehabilitative and/or community services for employees who meet certain criteria involving job performance or who have personal problems that affect job performance.

Subchapter 5 primarily concerns the Performance Assessment Review (PAR) program in State service. N.J.A.C. 4A:6-5.1, General provisions, provides for the establishment and approval of a performance evaluation system in local service. The rule also provides for the rating scales to be used in State service, as well as

standardized rating cycles, and recordkeeping requirements. N.J.A.C. 4A:6-5.2, PAR Procedure: State service, sets forth the procedures for completion of PARs and provides a mechanism for the filing of a complaint regarding an agency's noncompliance with the PAR program. N.J.A.C. 4A:6-5.3, PAR use and review: State service, provides for the consequences of specific ratings. The rule further provides for a grievance procedure regarding a PAR rating that involves review by the PAR Joint Union Management Panel.

It is noted that other amendments to N.J.A.C. 4A:6-1 through 5 that are currently under discussion are expected to be the subject of one or more separate proposals.

As the Board has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

In general, upon readoption, subchapter 1 will continue to provide guidance to State and local appointing authorities and employees concerning leaves of absence. Subchapters 2 through 5 are primarily aimed at State service, and will continue to provide a clear regulatory framework in the areas of hours of work, the SCOR program, human resource development and performance evaluation.

More specifically, the Board anticipates that the proposed amendments to

N.J.A.C. 4A:6-1.11 will have a positive social impact. The amendments would ensure that appointing authorities are aware that an employee's work hours may not be rescheduled, without his or her consent, due to a conflict with his or her required military duty. Consequently, such an employee's rights under federal law, as discussed in the above Summary, would be protected.

Additionally, amendments conforming N.J.A.C. 4A:6-1.11 to P.L.2001, c.351, as well as amendments regarding the rights of Coast Guard reservists, would serve to reduce confusion about these rights on the part of many merit system employees and their respective appointing authorities.

The Board expects a minimal social impact to result from the proposed amendments to N.J.A.C. 4A:6-1.13, regarding convention leave. The amendments would codify existing law. However, the codification of existing law in the rules would inform appointing authorities and employees about requirements in this area.

The Board anticipates that the readoption of N.J.A.C. 4A:6-1.18, Leave for emergency civilian duty: State service, will have a positive social impact. The rule authorizes leave for any State employee who meets the conditions described in the rule. For example, a State employee who is a certified disaster service volunteer of the American Red Cross is entitled to leave to participate in specialized disaster relief services when a disaster has been declared in New Jersey or in another state or

territory. Therefore, the Board anticipates a positive social impact for employees who wish to perform this necessary emergency work for the American Red Cross. Additionally, the American Red Cross and individuals and communities in need of disaster relief services both inside and outside New Jersey will benefit from this proposed readoption.

It is anticipated that the thorough definition of “catastrophic health condition or injury” in N.J.A.C. 4A:6-1.22, proposed for readoption, should eliminate much confusion among both appointing authorities and employees about donated leave eligibility. Additionally, it is expected that, as a result of the definition, eligible employees can look forward to the smooth processing of their donated leave requests.

Language in N.J.A.C. 4A:6-1.22 providing that an employee may be eligible for donated leave due to the donation of an organ should encourage organ donations. Availability of paid leave through participation in the donated leave program would be one less obstacle for an employee who might otherwise be interested in donating an organ or bone marrow. Thus, the readoption of this rule should have a positive impact on the public health.

Additionally, the Board anticipates that the readoption of N.J.A.C. 4A:6-1.24 will have a positive social impact. It would encourage the participation of State employees in New Jersey schools, by allowing them the opportunity to share their

special skills and interests and helping them provide other, appropriate assistance to teachers and students. Thus, employees would have an excused absence with pay for this purpose and teachers and children would enjoy the benefit of these employees' knowledge and experience. Together, the employees and the schools could work to substantially improve New Jersey's educational system.

Finally, the readoption of N.J.A.C. 4A:6-2.2A will have a positive social impact. Affected State appointing authorities would be able to use the flexibility allowed under Federal law in establishing work hours for law enforcement staff, and affected State employees would be adequately informed of their eligibility for the workweek and the manner in which overtime will be paid for their work hours.

Economic Impact

The rules proposed for readoption reflect current practice and, as such, are not anticipated to result in a significant economic impact on State and local appointing authorities and employees, with the exception of the proposed military leave amendments and some of the other rules as discussed below.

The Board believes that the proposed amendments to N.J.A.C. 4A:6-1.11 will have a positive economic impact on employees taking military leave. They would not be unilaterally required to essentially "make up" work time missed due to military leave, as the appointing authority would not be able to reschedule their work time without their consent. Therefore, such employees' work hours would not be affected by

their military duty unless they agreed to a rescheduling.

However, some appointing authorities could experience added costs. As this rule must be made consistent with Federal law, appointing authorities may not unilaterally require employees to make up time due to required military duty. Therefore, additional employees may need to be called upon to fill in for these employees, possibly necessitating more expenditures for overtime compensation.

The Board does not anticipate an economic impact to result from the proposed amendments to N.J.A.C. 4A:6-1.13, regarding convention leave, as the amendments would codify existing law.

With regard to the readoption of N.J.A.C. 4A:6-1.18, the Merit System Board anticipates a positive economic impact for State employees who are certified disaster service volunteers of the American Red Cross. They will be entitled to paid leave of up to 10 working days in a calendar year, in addition to up to 10 unpaid working days, to participate in specialized disaster relief services in accordance with specified conditions. Moreover, the American Red Cross and individuals and communities in need of disaster relief services both inside and outside New Jersey would economically benefit from the help that certain New Jersey State employees are able to provide.

Although State appointing authorities would be economically impacted by the

absence of some State employees under the readopted N.J.A.C. 4A:6-1.18, the Board does not anticipate a substantial impact. Relatively few employees would be eligible for the type of leave authorized by this rule.

Some State and local employees would benefit economically from the FMLA leave rule at N.J.A.C. 4A:6-1.21B. Under the rule's provisions, those employees eligible for FMLA leave would enjoy certainty about when their paid leave must be designated as FMLA leave.

The Board anticipates that readoption of N.J.A.C. 4A:6-1.22 will have a positive economic impact. Determining an employee's eligibility for donated leave would be made much easier with the readoption of this rule. Consequently, financial hardship on the part of the employee due to a catastrophic health condition or injury should be dramatically lessened. Conversely, the rule should not have an economic impact on appointing authorities, as they would not be providing additional paid leave (such as sick leave injury benefits) to employees, but rather existing sick or vacation leave donated by other employees. It is further anticipated that employees who donate leave would be minimally economically impacted, as they would be giving up paid leave that they might otherwise use but do not actually need. Finally, the definition of the term "catastrophic health condition or injury" should reduce the number of appeals on this issue.

The readoption of N.J.A.C. 4A:6-1.24 should have an overall positive economic impact. State employees would be assured paid time off from work to volunteer at schools in accordance with the criteria set forth in the rule. They would not experience any financial hardship in doing so, and would therefore be more likely to volunteer their knowledge and skills to assist in school programs. This assistance would help schools that are otherwise financially strapped to provide a better education for their students. Although there would be some costs to State agencies and participating local governments in providing additional paid leave, these costs would be minimal based on the 20-hour annual limit for paid leave.

The readoption of N.J.A.C. 4A:6-2.2A should have a positive economic impact on affected State appointing authorities. These agencies would be able to control overtime accrual by balancing hours of work over the entire 28-day cycle.

The PAR rules at N.J.A.C. 4A:6-5.1 through 5.3 would assist supervisors in better understanding and applying the rating scale and, just as important, ensure that employees are evaluated in a timely fashion. N.J.A.C. 4A:4-2.15(c) provides that a promotional candidate shall receive credit for the PAR rating on file in his or her personnel folder as of the announced closing date; the PAR rules would help ensure that the PAR rating on file is the current one. An employee would therefore get credit for his or her most recent rating, which could work to his or her advantage in the promotional process.

Federal Standards Statement

With the exception of N.J.A.C. 4A:6-1.4, Sick leave procedures: State service, N.J.A.C. 4A:6-1.7, Sick Leave Injury (SLI) reporting and appeal procedures: State service, N.J.A.C. 4A:6-1.11, Military leave, and N.J.A.C. 4A:6-1.21B, Federal family and medical leave, N.J.A.C. 4A:6-1 through 5 are not subject to any Federal requirements or standards. Although N.J.A.C. 4A:6-1.4 and 1.7 are subject to medical confidentiality requirements of the Americans With Disabilities Act, 42 U.S.C. 12101 et seq., those rule sections do not exceed Federal requirements or standards.

With respect to the proposed amendments to N.J.A.C. 4A:6-1.11, a Federal standards analysis is not necessary, as the proposed amendments meet, but do not exceed, Federal statutory provisions concerning rights of employees who are in the uniformed service. Specifically, the proposed modification of provisions in N.J.A.C. 4A:6-1.11 that now permit an appointing authority to reschedule an employee's work time to avoid conflict with required military duty would ensure that the employee's rights under Federal law are protected. See 38 U.S.C. Section 4311. Additionally, requirements concerning Coast Guard reservists would be reflected pursuant to 10 U.S.C. Section 10101.

As for N.J.A.C. 4A:6-1.21B, which contains informational provisions on the FMLA, N.J.A.C. 4A:6-1.21B(j) provides that, in State service, FMLA leave without pay shall not be deducted from seniority for layoff purposes. Although the Federal law (29

U.S.C. 2601 et seq.) does not include such a guarantee for seniority, the Board adopted this provision in 1994 in accordance with its rulemaking powers and authority to regulate layoffs in civil service jurisdictions. See N.J.S.A. 11A:2-6(d) and 11A:8-1. Therefore, a Federal standards analysis is not necessary.

Jobs Impact

It is not anticipated that the rules proposed for readoption at N.J.A.C. 4A:6-1 through 6-5 with amendments will have any jobs impact. No jobs will be created or lost due to the rules proposed for readoption with amendments.

Agriculture Industry Impact

It is not anticipated that the rules proposed for readoption with amendments would have any agriculture industry impact. The rules concern leaves, hours of work and employee development in the public sector.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the rules proposed for readoption at N.J.A.C. 4A:6-1 through 5 with amendments will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules will regulate employment in the public sector.

Smart Growth Impact

It is not anticipated that the rules proposed for readoption with amendments will have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002).

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 4A:6-1 through 5.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

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4A:6-1.11 Military leave

[(a) An employee in the career, senior executive or unclassified service, other than a person holding a position for a fixed term or period, who enters the military service in time of war or emergency, or for any period of training, or pursuant to any selective service system, shall be entitled to a leave of absence without pay for the period of such service and three months after discharge. However, if an employee is incapacitated by wound or illness at the time of discharge, such leave shall be extended until three months from recovery but in no event more than two years from date of discharge.

1. During such leave of absence, the employee shall continue to accrue seniority and salary increments, if applicable, in his or her title.

2. No entitlements under this section shall be granted if the separation from military service is by a dishonorable discharge. See N.J.S.A. 38:23-4.

3. For Federal reemployment rights, see 43 U.S.C. Section 2021.]

(a) Regarding military service for New Jersey National Guard members:

[(b)] 1. An employee in the career, senior executive or unclassified service who is a member of the national guard or other component of the organized militia of the State of New Jersey shall be entitled to a leave of absence with pay not to exceed 90 work days in the aggregate in any one calendar year [that he or she is required to engage in active duty or active duty for training.] for any period of Federal or State active duty, except that there shall be no limit on paid leave for State active duty. Both Federal and State active duty shall include active duty and active duty for training but not inactive duty training such as weekend drills. See N.J.S.A. 38A:4-4. The Adjutant General of the New Jersey Department of Military and Veterans Affairs shall determine the definition of Federal and State active duty and active duty for training. See N.J.A.C. 5A:2-2.1 [(d) for types of required duty]. An appointing authority may not unilaterally reschedule an employee's work time to avoid conflict with military leave. However, an appointing [authorities may] authority and an employee may mutually agree to reschedule an employee's work time to [avoid conflict with such required duty] accommodate the employee's military leave.

[1. A leave of absence with pay shall also be granted for other military duty when ordered by the Governor in case of insurrection, breach of the peace, national disaster or imminent danger to public safety.

2. Such leave of absence shall be in addition to the regular vacation allowed such employee. See N.J.S.A. 38A:4-4.]

(b) Regarding military service for reservists other than New Jersey National Guard members:

[(c)] 1. A permanent or nonpermanent employee who is a member of the organized reserves of the Army, Navy, Air Force [or] , Marine Corps or Coast Guard of the United States or other affiliated organizations including National Guard units of other states, shall be entitled to a leave of absence with pay [on days on which he or she is required to engage in field training, but only that training which consists of participation in unit training field operations and is a part of the required annual tour of duty in order to be a member of that component.] not in excess of 30 work days in the aggregate in a calendar year when he or she shall be engaged in any period of Federal active duty. Federal active duty shall include active duty and active duty for training but not inactive duty training such as weekend drills. See N.J.S.A. 38:23-1. An appointing authority may not unilaterally reschedule an employee's work time to avoid conflict with military leave. However, an appointing [authorities may] authority and an employee may mutually agree to reschedule an employee's work time to [avoid conflict with military field training] accommodate the employee's military leave.

[1. A nonpermanent employee serving for one year or longer shall be entitled to a leave of absence with pay not to exceed 30 days in the aggregate in any one year while engaged in field training. A leave of absence without pay shall be granted to a nonpermanent employee serving for less than a year while engaged in field training.

2. Such leave of absence shall be in addition to the regular vacation allowed such employee. See N.J.S.A. 38:23-1 and 38:23-1.1.]

(c) Regarding service for all members of the military in time of war or emergency:

1. An employee in the career, senior executive or unclassified service, other than a person holding a position for a fixed term or period, who enters either Federal or State active military service in time of war or emergency, or for any period of training, or pursuant to any selective service system, shall be entitled to a leave of absence without pay for the period of such service and three months after discharge. However, if an employee is incapacitated by wound or illness at the time of discharge, such leave shall be extended until three months from recovery but in no event more than two years from date of discharge.

2. No entitlements under this section shall be granted if the separation from military service is by a dishonorable discharge. See N.J.S.A. 38:23-4.

3. For Federal reemployment rights, see 38 U.S.C. Section 4301 et seq.

4. To the extent that a New Jersey National Guard member has not exhausted 90 days of paid leave in accordance with (a) above, or a reservist has not exhausted 30 days of paid leave in accordance with (b) above, those days may be applied to military service in time of war or emergency in accordance with (a)1 through 3 above.

(d) An employee is entitled to a leave of absence without pay for such other [national guard, state organized militia or United States reserve] military duty not covered by (a), (b) or (c) above.

[1. During such leave of absence, the employee shall continue to accrue seniority and salary increments, if applicable, in his or her title.]

[2.] 1. At the discretion of the employee, vacation leave, administrative leave and other accrued compensation may be used for such absences.

(e) During any leave of absence pursuant to (a) through (d) above, the employee shall continue to accrue seniority and salary increments, if applicable, in his or her title, and any leave of absence granted to the employee shall be in addition to other time off allowed such employee.

[(e)] (f) For military leave regulations promulgated by the New Jersey Department of [Defense] Military and Veterans' Affairs, see N.J.A.C. 5A:2.

4A:6-1.13 Convention leave

(a) Every employee in the career, senior executive or unclassified service who is a duly authorized representative shall, upon request, be granted a leave of absence with pay for a period of up to five days in any calendar year to attend any State or national convention of any one or more of the [established veterans] organizations listed in N.J.S.A. 38:23-2 [and the New Jersey Civil Service Association]. The five days shall include necessary travel time. Written notice from the appropriate organization indicating that the employee is a duly authorized delegate shall be submitted to the appointing authority prior to the convention. A certificate of attendance shall be submitted to the appointing authority after the convention indicating the delegate's attendance.

(b) [Every] An employee who is a duly authorized representative of the [following organizations] New Jersey Policemen's Benevolent Association, Inc.; the Fraternal Order of Police; the Firemen's Mutual Benevolent Association, Inc.; or the Professional Fire Fighters Association of New Jersey shall be granted a leave of absence with pay to attend [the following conventions] a State or national convention of one or more of those organizations; provided, however, that:

1. No more than 10 percent of the employee organization's membership shall be permitted such a leave of absence with pay, except that no less than two and no more than 10 authorized representatives shall be entitled to such leave, unless more than 10 authorized representatives are permitted such leave pursuant to an agreement between the appointing authority and negotiations representatives.

2. For employee organizations with more than 5,000 members, a maximum of 25 authorized representatives shall be entitled to such leave.

(c) The leave shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention ,except that such leave shall be for no more than seven days. A certificate of attendance at the convention shall, upon request, be submitted by the representative so attending. See N.J.S.A. 11A:6-10 [;] and [N.J.S.A.] 40A:14-177 [and 38:23-2].

[1. American Federation of Police Officers, Inc.;

2. Bronze Shield, Inc.;

3. Batons;

4. Fire Fighters Association of New Jersey;
5. Firemen's Mutual Benevolent Association Inc.;
6. Fraternal Order of Police;
7. New Jersey Association of Chiefs of Police;
8. New Jersey State Exempt Firemen's Association;
9. New Jersey State Patrolmen's Benevolent Association, Inc.;
10. Uniformed Firemen's Association;
11. Vulcan Pioneers;
12. A member organization of the New Jersey Council of Charter Members of the National Black Police Association, Inc.

(c) Any corrections officer who is a member of the Italian American Police Society of New Jersey shall be granted a leave of absence with pay to

attend any State or national convention of the organization. The leave shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention. A certificate of attendance at the convention shall, upon request, be submitted by the member so attending. See N.J.S.A. 11A:6-10.]

(d) Persons designated by the Governor shall be granted leaves of absence to attend the convention of the American Correctional Association (American Prison Association). See N.J.S.A. 30:4-178.

[(e)] (f) Any full-time teaching staff member, secretary or office clerk of any local school district who applies to his or her board of education shall be granted a leave of absence with pay to attend the convention of the New Jersey Education Association. Such leave shall not exceed two days within any one calendar year. The employee must file a certificate of attendance with the board of education. The certificate must be signed by the executive secretary of the association for the employee to receive paid leave. See N.J.S.A. 18A:31-2.

[(f)] The Chancellor of Higher Education, with approval of the Board of Higher Education, may prepare rules concerning leaves of absence and

payment during such leaves for teachers employed in the State colleges. See N.J.S.A. 18A:64-16.]

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